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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

NO. 4:15-cv-05087

Plaintiff,

UNITED STATES' ANSWER

V.

ERNEST J. MONIZ, Secretary of
the United States Department of
Energy, the UNITED STATES
DEPARTMENT OF ENERGY, and
WASHINGTON RIVER
PROTECTION SOLUTIONS LLC

Defendants.

1 Defendants the United States Department of Energy and Ernest J. Moniz,
2 in his official capacity as Secretary of the United States Department of Energy
3 (collectively, “DOE”), respond to the “Complaint for Declaratory and Injunctive
4 Relief” filed by the State of Washington (“Plaintiff”) on September 2, 2015
5 (ECF No. 1). The section headings and numbered paragraphs below correspond
6 to the headings and numbered paragraphs in Plaintiff’s Complaint. DOE denies
7 all allegations of the Complaint, whether express or implied, that are not
8 specifically admitted.

12 **I. NATURE OF ACTION**

13 1. The allegations in Paragraph 1 constitute legal conclusions and argument
14 of Plaintiff’s legal theory and/or characterization of its case and therefore no
15 response is required. To the extent a response is required, the allegations of this
16 paragraph are denied.
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19 **II. JURISDICTION**

20 2. The allegations in Paragraph 2 constitute legal conclusions, to which no
21 response is required.

23 3. The allegation in Paragraph 3 constitutes a legal conclusion, to which no
24 response is required.

26 4. The allegations in Paragraph 4 constitute legal conclusions to which no
27 response is required.

5. With respect to allegations in the first sentence of Paragraph 5, DOE admits only that the Washington State Attorney General's Office provided DOE with a letter dated November 19, 2014, stating Plaintiff's intent to file suit. The referenced letter speaks for itself and is the best evidence of its content. The second sentence of Paragraph 5 constitutes a legal conclusion, to which no response is required.

6. With respect to the first sentence in Paragraph 6, DOE admits only that more than 90 days have passed since the Washington State Attorney General's Office sent its RCRA notice of intent to file suit to Defendants. The allegations in the second sentence of Paragraph 6 are denied.

7. DOE admits the allegations in Paragraph 7.

III. VENUE

8. With respect to the allegations in Paragraph 8, DOE admits only that the Hanford Site is located within the judicial district of the Eastern District of Washington. The remaining allegations in Paragraph 8 constitute legal conclusions to which no response is required.

IV. PARTIES

9. DOE admits only that Plaintiff is the State of Washington. The second sentence of Paragraph 9 constitutes a legal conclusion to which no response is required. With respect to the first sentence of Paragraph 9(a) DOE admits only

1 that EPA has authorized the State to administer RCRA within State boundaries.
2 The remaining portion of the first sentence of Paragraph 9(a) constitutes a legal
3 conclusion to which no response is required. With respect to the second and
4 third sentences of Paragraph 9(a), DOE admits only that Defendants store and
5 treat "mixed waste" at the Hanford Site, meaning that it contains both a
6 hazardous chemical component and a radioactive component. The remainder of
7 Paragraph 9(a) constitutes legal conclusions to which no response is required.
8 DOE is without sufficient knowledge or information to admit or deny the
9 allegations in the first sentence of Paragraph 9(b). DOE denies the allegations in
10 the second sentence of Paragraph 9(b). With respect to the allegations in the
11 third sentence of Paragraph 9(b), DOE is without sufficient information to admit
12 or deny the State's interest and on that basis denies the allegations.

13 10. DOE admits the allegations in Paragraph 10.

14 11. With respect to the allegation in the first sentence of Paragraph 11, on
15 information and belief, DOE admits only that Defendant WRPS is a Limited
16 Liability Company organized under the laws of the State of Delaware. DOE
17 admits the second and third sentences of Paragraph 11.

18 25 **V. FACTS**

19 26 **A. The Hanford Site and the Tank Farms**

1 12. With respect to the allegations in the first sentence of Paragraph 12, DOE
2 admits only that the Hanford Site is located in south-central Washington and the
3 approximate extent of the facility is 586 square miles. With respect to the
4 second sentence in Paragraph 12, DOE admits only that the United States
5 produced plutonium at the Hanford site for use in nuclear weapons. DOE denies
6 the remaining allegations in the second sentence of Paragraph 12. With respect
7 to the third sentence in Paragraph 12, DOE admits only that plutonium
8 production and other activities at Hanford created radioactive, hazardous, and
9 “mixed waste,” meaning waste that contains both a hazardous chemical
10 component and a radioactive component. DOE denies the remaining allegations
11 in the third sentence of Paragraph 12. With respect to the last sentence in
12 Paragraph 12, DOE admits only that waste remains at the Hanford Site today,
13 awaiting treatment and/or disposal. The remaining allegations in the last
14 sentence of Paragraph 12 are denied.

15 13. With respect to the allegations in the first sentence of Paragraph 13, DOE
16 admits only that the Hanford Site includes 177 underground storage tanks that
17 store approximately 56 million gallons of mixed radioactive and hazardous
18 waste. DOE denies the remaining allegations in the first sentence. With respect
19 to the second sentence of Paragraph 13, DOE admits only that the waste storage
20 tanks range in size from approximately 55,000 gallons to 1,100,000 gallons. The
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1 third sentence Paragraph 13 constitutes a legal conclusion to which no response
2 is required.

3 14. With respect to the allegations in the first sentence of Paragraph 14, DOE
4 admits only that sodium hydroxide and sluicing are used to remove hardened
5 waste in some of the underground storage tanks at Hanford. The remaining
6 allegations in the first sentence of Paragraph 14 are denied. DOE admits the
7 allegations second and third sentences of Paragraph 14.

8 15. DOE admits the allegations in the first, second, third and fourth sentences
9 in Paragraph 15. With respect to last sentence in Paragraph 15, DOE admits only
10 that chemical liquids were routed from processing facilities to storage tanks
11 located in the tank farms. The remaining allegations in the last sentence of
12 Paragraph 15 are denied.

13 16. DOE admits the allegations in the first sentence in Paragraph 16. The
14 allegations in the second sentence of Paragraph 16 are vague and ambiguous
15 with respect to the alleged identification of tanks as “unfit for use”. To the
16 extent the alleged identification is in a document, that document would speak for
17 itself and be the best evidence of its content. The remainder of the allegations in
18 Paragraph 16 constitute legal conclusions to which no response is required.

19 17. With respect to the first sentence in Paragraph 17, DOE admits only that
20 certain employees of WRPS, Energy, or as contracted workers, work in the 200
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1 Area where the tank farms are located. With respect to the allegation in the
2 second sentence of Paragraph 17, DOE admits only that some of these workers
3 are involved in “retrieving” waste from the single-shell tanks and transferring
4 the waste to double-shell tanks. The remainder of the allegation in the second
5 sentence of Paragraph 17 constitutes a legal conclusion to which no response is
6 required. DOE admits the third sentence and fourth sentences of Paragraph 17.
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8 DOE denies the allegations in the remainder of Paragraph 17.

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10 **B. Hanford’s Tank Waste and Tank Vapors**

12 18. With respect to the allegations in the first sentence of Paragraph 18, DOE
13 admits only that the chemical waste in some of the Hanford underground storage
14 tanks consists of varying mixtures of liquids, solids (including saltcake and
15 sludge), and vapors. DOE admits the allegations in the second sentence of
16 Paragraph 18. With respect to the third sentence in Paragraph 18, DOE admits
17 only that these reactions may result in the production of gases or vapors in
18 certain tanks. DOE denies the remaining allegations in the last sentence of
19 Paragraph 18.

20 23 19. With respect to the allegations in Paragraph 19, DOE admits only that
21 over 1,500 different chemicals have been detected or theorized to exist in the
22 vapors contained collectively among the headspaces certain Hanford tanks, and
23 that the chemicals may include hydrogen, ammonia, mercury, N-

1 nitrosodimethylamine, 2-nitrosamines, and volatile organic compounds. DOE
2 denies the remaining allegations in Paragraph 19, including any implication that
3 all 1,500 chemicals have been detected in any one tank.
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5 20. DOE is unable to admit or deny the allegations of Paragraph 20 because
6 the allegations are vague with respect to any specific chemical and the presumed
7 exposure duration and the specific concentration of the unidentified chemical
8 that is alleged to potentially lead to various adverse health effects. DOE admits
9 only that exposure to certain chemicals at sufficient concentration and for a
10 sufficient duration may potentially lead to some adverse health effects which
11 may include those identified in Paragraph 20. DOE denies the remainder of the
12 allegations in Paragraph 20.

16 21. With respect to the first sentence of Paragraph 21, DOE admits only that
17 Hanford's single-shell and double-shell tank ventilation systems are designed to
18 prevent the build-up of excess flammable gases in the tanks' headspace that
19 could pose potentially serious safety consequences. DOE denies the remaining
20 allegations in the first sentence of Paragraph 21. With respect to the second
21 sentence of Paragraph 21, DOE admits only that neither the single-shell nor the
22 double-shell tanks are equipped with systems or filters designed to capture or
23 remove the chemical components of vented vapors. DOE denies the remaining
24 allegations in this sentence.
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1 22. With respect to the first sentence of Paragraph 22, DOE admits only that
2 the twenty-eight double-shell tanks are fitted with active ventilation systems.
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4 DOE denies the remaining allegations in the first sentence of Paragraph 22.
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6 With respect to the second sentence of Paragraph 22, DOE admits only that the
7 active ventilation systems have HEPA filters and exhausters, which ventilate the
8 headspace. DOE denies the remaining allegations in the second sentence of
9 Paragraph 22. DOE admits the third sentence of paragraph 22. With respect to
10 the allegations in the fourth sentence of Paragraph 22, DOE admits only that
11 HEPA filters remove particulates (radioactive and toxic) prior to venting, but do
12 not remove all chemical vapors. DOE denies any remaining allegations in the
13 fourth sentence of Paragraph 22.

16 23. With respect to the first sentence of Paragraph 23, DOE admits only that
17 generally, unlike the chemical vapors in the double-shell tanks, the vapors in the
18 single-shell tanks are passively vented unless the waste is being actively
19 retrieved. DOE denies the remaining allegations in the first sentence of
20 Paragraph 23. With respect to the second sentence of Paragraph 23, DOE
21 admits only that the single-shell tanks may allow chemical vapors to escape
22 through vents that have HEPA filters. DOE denies the remaining allegations in
23 the second sentence of Paragraph 23. DOE denies the allegations contained in
24 the third sentence of Paragraph 23. With respect to the fourth sentence of
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1 Paragraph 23, DOE admits only that under certain atmospheric conditions,
2 passive tank headspace releases are potentially closer to the workers' breathing
3 zones as compared to active ventilation, and denies the remaining allegations in
4 the sentence.

5 24. With respect to the first sentence of Paragraph 24, DOE admits only that
6 in addition to the release of vapors through active or passive venting of the
7 tanks, chemical vapors can leak through other openings/leakage pathways
8 connected to the tanks. DOE denies the remaining allegations in the first
9 sentence of Paragraph 24. With respect to the allegations in the second sentence
10 of Paragraph 24, DOE admits only that, for example, chemical vapors from the
11 tanks and tank systems can leak out from the concrete-lined pits in which the
12 tanks sit, electrical cabinets, breather filters, unsealed tank penetration areas, and
13 breaks in containment. The remaining allegations in the second sentence of
14 Paragraph 24 are denied. The allegations contained within the last sentence of
15 Paragraph 24 regarding unidentified "individuals in the 200 Area" and
16 unspecified "risk" are too vague and ambiguous to admit or deny and on that
17 basis are denied.

18 25. The allegations contained within the first sentence of Paragraph 25
19 regarding unidentified "individuals in the 200 Area" and unspecified levels of
20 "exposure" are too vague and ambiguous to admit or deny and on that basis are
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1 denied. On information and belief, DOE denies the allegations contained in the
2 second sentence of Paragraph 25.

3 26. W. DOE denies the allegations in the first sentence of Paragraph 26. With
4 respect to the second sentence in Paragraph 26, DOE lacks knowledge or
5 information sufficient to form a belief as to the truth of the allegations, and on
6 that basis denies the allegations.

7 **C. Hanford's Tank Vapor Investigations/Studies**

8 27. With respect to the first sentence of Paragraph 27, DOE admits only that
9 there are reported worker vapor exposure events dating back to the late 1980s.
10 Any remaining allegations in the first sentence of Paragraph 27 are denied. DOE
11 admits the second sentence of Paragraph 27. With respect to the remaining
12 allegations contained in Paragraph 27, the referenced report speaks for itself and
13 is the best evidence of its contents.

14 28. DOE denies the allegations in Paragraph 28.

15 29. DOE admits only the allegations contained within the first and second
16 sentences of Paragraph 29. With respect to the remaining allegations contained
17 in Paragraph 29 and subsections (a) through (h), the referenced report speaks for
18 itself and is the best evidence of its contents.

19 30. DOE denies the allegations in Paragraph 30.

1 31. With respect to the allegations contained within the first sentence of
2 Paragraph 31, DOE admits only that WRPS asked the Savannah River National
3 Laboratory to assemble a team of experts, the Hanford Tank Vapor Assessment
4 Team, to perform a review of the chemical vapors program at the Hanford tank
5 farms. The remainder of the allegations in the first sentence of Paragraph 31 are
6 denied. DOE admits the allegations contained in the second sentence of
7 Paragraph 31. With respect to third sentence in Paragraph 31, DOE admits only
8 that the 2014 report was funded by the U.S. Government. The remaining
9 allegations in the third sentence of Paragraph 31 are denied. With respect to the
10 remainder of allegations contained in Paragraph 31, and subsections (a) through
11 (c), the referenced report speaks for itself and is the best evidence of its contents.

12 32. With respect to the allegations contained in Paragraph 32, and subsections
13 (a) through (j), the referenced report speaks for itself and is the best evidence of
14 its contents.

15 33. DOE denies the allegations contained in Paragraph 33.

16 **VI. CLAIMS FOR RELIEF- RCRA CITIZEN SUIT**

17 34. DOE incorporates its responses to paragraphs 1-33 above.

18 35. The allegations in Paragraph 35 constitute legal conclusions to which no
19 response is required.

1 36. The allegation in Paragraph 36 constitutes a legal conclusion to which no
2 response is required.

3 37. The allegations in Paragraph 37 constitute legal conclusions to which no
4 response is required.

5 38. The allegations in Paragraph 38 constitute legal conclusions to which no
6 response is required.

7 39. The allegations in Paragraph 39 constitute legal conclusions to which no
8 response is required.

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10 **VII. RELIEF REQUESTED**

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12 DOE denies that the State is entitled to the relief requested in Section VII,
13 Paragraphs A-E.

14
15 **DEFENSES**

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17 **FIRST DEFENSE**

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19 The Court lacks subject matter jurisdiction over some or all of Plaintiff's
20 Complaint.

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22 **SECOND DEFENSE**

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24 Plaintiff's Complaint should be dismissed, in whole or in part, for failure
25 to state a claim upon which relief can be granted.

1
2 DATED: December 7, 2015

3 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in this action.

s/ Cynthia J. Morris
Cynthia J. Morris